

doubt about his commitment to the rule of law. I voted against the two previous Attorneys General because of their involvement in one issue: torture.

As White House Counsel, Alberto Gonzales was an architect in the Bush administration's policy on interrogation, a policy which has come into criticism not only in the United States but around the world. His successor, Michael Mukasey, refused to repudiate torture techniques such as waterboarding. That was unfortunate because Mr. Mukasey really brought a stellar resume to the job, but that really was a bone in my throat that I couldn't get beyond, and I voted against his nomination.

Now, during his confirmation hearing, Eric Holder gave a much different response. When asked directly, he said: "Waterboarding is torture."

Those three words resonated throughout the committee room and across the Nation among many Americans who had been concerned about this important issue and literally gave a message to the world that there was a new day dawning in Washington.

I also asked Mr. Holder the same question I asked Attorneys General Gonzalez and Mukasey: Does he agree with the Judge Advocates General, the four highest ranking military lawyers, that the following interrogation techniques violate the Geneva Conventions: painful stress position, threatening detainees with dogs, forced nudity, or mock execution. Mr. Holder said:

The Judge Advocate General Corps are in fact correct that those techniques violate Common Article 3 of the Geneva Conventions.

Some of my colleagues on the other side of the aisle have suggested that Eric Holder's opposition to torture will somehow lead to a witch hunt against former Bush officials. Frankly, this seems like a weak excuse to delay the confirmation of a well-qualified nominee.

Here are the facts: President Obama and Eric Holder made it clear that while no one is above the law, the administration is going to move forward, not back. The goal to investigate the Bush administration does not come from the Obama administration but from others such as retired major general Antonio Taguba, who led the U.S. Army's official investigation into the Abu Ghraib prison scandal.

Here is what General Taguba recently said:

The Commander in Chief and those under him authorized a systematic regime of torture. . . . there is no longer any doubt as to whether the [Bush] administration has committed war crimes.

In the words of General Taguba:

The only question that remains to be answered is whether those who ordered the use of torture will be held to account.

Indeed, the facts are troubling. Former President Bush and former Vice President Cheney have acknowledged authorizing the use of waterboarding which the United States

had previously prosecuted as a war crime. Susan Crawford, the Bush administration official who ran the Guantanamo military commissions, said that the so-called 20th 9/11 hijacker cannot be prosecuted because "his treatment met the legal definition of torture."

Now it appears some Republicans are holding up Eric Holder's nomination because of the problems of the previous administration. A headline in the Washington Post this last Sunday highlighted the irony. It said: "Bush Doctrine Stalls Holder Confirmation." Apparently, some Republicans are opposing Eric Holder because of their concern that former Bush administration officials may be prosecuted for committing war crimes.

Here is what the junior Senator from Texas said:

I want some assurances that we're not going to be engaging in witch hunts.

But Mr. Holder has made it clear in his testimony there will be no witch hunts. He testified:

We will follow the evidence, the facts, the law, and let that take us where it should. But I think President-elect Obama has said it well. We don't want to criminalize policy differences that might exist between the outgoing administration and the administration that is about to take over.

The junior Senator from Texas also expressed concerns about Eric Holder's "intentions . . . with regard to intelligence personnel who were operating in good faith based upon their understanding of what the law was." But Mr. Holder has made his intentions clear. He testified:

It is, and should be, exceedingly difficult to prosecute those who carry out policies in a reasonable and good faith belief that they are lawful based on assurances from the Department of Justice itself.

What more would you expect a man aspiring to be Attorney General to say? It certainly would be inappropriate to seek an advance commitment from any nominee for Attorney General that they will definitely not investigate allegations of potential criminal activity. No responsible Attorney General would ever say that, nor should that person be confirmed if they made that statement.

Senator LINDSEY GRAHAM, another Republican member of the Judiciary Committee, recognizes that fact. Senator GRAHAM, also a military lawyer still serving, said:

Making a commitment that we'll never prosecute someone is probably not the right way to proceed.

He went on to say:

I don't expect [Holder] to rule it in or rule it out. In individual cases if there's allegations of mistreatment, judges can handle that and you can determine what course to take.

I think Senator LINDSEY GRAHAM has hit the nail on the head. I hope no one will use this false specter of a witch hunt as an excuse to oppose a fine nominee.

I say to my colleagues, if you have an objection to Eric Holder based on his

qualifications, vote against him. But don't oppose him because the previous administration may have been guilty of wrongdoing which may lead to a prosecution. There are too many hypotheticals in that position. In fact, these misdeeds are the reasons we need Eric Holder's leadership.

Here is what President Obama has said about the need to reform the Justice Department:

It's time that we had a Department of Justice that upholds the rule of law and American values, instead of finding ways to enable a President to subvert them. No more political parsing or legal loopholes.

I think Eric Holder is the right person to fill the vision of President Obama. After 8 years of a Justice Department that too many times put politics before principle, we now have a chance to confirm a nominee with strong bipartisan support who can restore the Department to its rightful role as guardian of our fundamental rights.

I urge my colleagues to support Eric Holder's nomination.

AMENDMENT NO. 39

Mr. DURBIN. Mr. President, I ask unanimous consent that the pending Baucus amendment No. 39 be agreed to, the motion to reconsider be laid upon the table, and the bill, as thus amended, be considered as original text for the purpose of further amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate resumes consideration of H.R. 2 on Wednesday, the time until 11 a.m. be for debate with respect to McConnell, et al., amendment No. 40, with the time equally divided and controlled between the majority and Republican leaders or their designees; that no amendments be in order to the amendment prior to a vote in relation to the amendment; that at 11 a.m. the Senate proceed to vote in relation to the McConnell amendment, No. 40; provided further, if the McConnell amendment is agreed to, the bill, as thus amended, be considered as original text for the purpose of further amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. DURBIN. I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### FURTHER CHANGES TO S. CON. RES. 70

Mr. CONRAD. Mr. President, section 227 of S. Con. Res. 70, the 2009 Budget resolution, permits the chairman of the Senate Budget Committee to revise the allocations, aggregates, and other appropriate levels in the resolution for

legislation making improvements in health care, including, under subsection (a), legislation that reauthorizes the State Children's Health Insurance Program, SCHIP. The revisions are contingent on certain conditions being met, including that such legislation not worsen the deficit over the period of the total of fiscal years 2008 through 2013 or the period of the total of fiscal years 2008 through 2018. In addition, section 227 limits the amount of the adjustment in outlays to no more than \$50 billion over the period of the total of fiscal years 2008 through 2013.

I find that Senate amendment No. 39, an amendment in the nature of a substitute to H.R. 2, the Children's Health Insurance Program Reauthorization Act of 2009, satisfies the conditions of the reserve fund to improve America's health. Therefore, pursuant to section 227, I am adjusting the aggregates in the 2009 budget resolution, as well as the allocation provided to the Senate Finance Committee.

I ask unanimous consent that the following revisions to S. Con. Res. 70 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009—S. CON. RES. 70; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 227 DEFICIT-NEUTRAL RESERVE FUND TO IMPROVE AMERICA'S HEALTH

[In billions of dollars]

Section 101

(1)(A) Federal Revenues:

|               |           |
|---------------|-----------|
| FY 2008 ..... | 1,875.401 |
| FY 2009 ..... | 2,033.468 |
| FY 2010 ..... | 2,212.116 |
| FY 2011 ..... | 2,420.408 |
| FY 2012 ..... | 2,513.164 |
| FY 2013 ..... | 2,633.975 |

(1)(B) Change in Federal Revenues:

|               |          |
|---------------|----------|
| FY 2008 ..... | -3.999   |
| FY 2009 ..... | -63.931  |
| FY 2010 ..... | 28.718   |
| FY 2011 ..... | -7.662   |
| FY 2012 ..... | -144.431 |
| FY 2013 ..... | -116.244 |

(2) New Budget Authority:

|               |           |
|---------------|-----------|
| FY 2008 ..... | 2,564.237 |
| FY 2009 ..... | 2,548.889 |
| FY 2010 ..... | 2,574.071 |
| FY 2011 ..... | 2,701.088 |
| FY 2012 ..... | 2,744.638 |
| FY 2013 ..... | 2,871.918 |

(3) Budget Outlays:

|               |           |
|---------------|-----------|
| FY 2008 ..... | 2,466.678 |
| FY 2009 ..... | 2,575.667 |
| FY 2010 ..... | 2,630.249 |
| FY 2011 ..... | 2,718.860 |
| FY 2012 ..... | 2,728.215 |
| FY 2013 ..... | 2,861.791 |

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009—S. CON. RES. 70; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 227 DEFICIT-NEUTRAL RESERVE FUND TO IMPROVE AMERICA'S HEALTH

[In millions of dollars]

Current Allocation to Senate Finance Committee

|                                |           |
|--------------------------------|-----------|
| FY 2008 Budget Authority ..... | 1,102,801 |
|--------------------------------|-----------|

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009—S. CON. RES. 70; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 227 DEFICIT-NEUTRAL RESERVE FUND TO IMPROVE AMERICA'S HEALTH—Continued

|  |           |
|--|-----------|
| FY 2008 Outlays .....                          | 1,104,781 |
| FY 2009 Budget Authority .....                 | 1,092,354 |
| FY 2009 Outlays .....                          | 1,093,724 |
| FY 2009–2013 Budget Authority .....            | 6,161,994 |
| FY 2009–2013 Outlays .....                     | 6,170,488 |
| Adjustments                                    |           |
| FY 2008 Budget Authority .....                 | 0         |
| FY 2008 Outlays .....                          | 0         |
| FY 2009 Budget Authority .....                 | 10,621    |
| FY 2009 Outlays .....                          | 2,387     |
| FY 2009–2013 Budget Authority .....            | 50,062    |
| FY 2009–2013 Outlays .....                     | 32,819    |
| Revised Allocation to Senate Finance Committee |           |
| FY 2008 Budget Authority .....                 | 1,102,801 |
| FY 2008 Outlays .....                          | 1,104,781 |
| FY 2009 Budget Authority .....                 | 1,102,975 |
| FY 2009 Outlays .....                          | 1,096,111 |
| FY 2009–2013 Budget Authority .....            | 6,212,056 |
| FY 2009–2013 Outlays .....                     | 6,203,307 |

GEITHNER NOMINATION

Mr. KOHL. Mr. President, yesterday the Senate confirmed Timothy Geithner as the Secretary of Treasury with my support. Mr. Geithner has the experience and the knowledge to lead the country through these economic hard times.

The Treasury Department is facing an uphill battle to provide appropriate monetary policy and regulations to get our economy back on track. Congress has been working with Federal Reserve and the Treasury Department to find ways to jump-start our economy. Congress recently approved the release of the second half of the TARP funds and is working with the new administration to create an effective economic stimulus package. I am pleased that President Obama and Mr. Geithner have committed themselves to restructuring the TARP but stress the importance of reforms which increase accountability, transparency, and help homeowners. Furthermore, the Treasury Secretary must implement meaningful and effective policies to avoid another system-wide failure and promote long-term economic stability. Mr. Geithner's career in the Treasury Department and the Federal Reserve Bank of New York has made him well qualified for the difficult task at hand.

Mr. SPECTER. Mr. President, I have sought recognition to discuss my vote against the nomination of Mr. Timothy F. Geithner to be Secretary of the Treasury.

I was originally inclined to support the nomination to enable President Obama to get his team together and begin addressing the economic crisis. As I have said publicly, I want to be supportive of President Obama and I understand the importance of assembling his full economic team to address

the critical problems facing our Nation's economy. After considerable thought, I have decided I cannot support this nomination. I have since taken a close look at the circumstances of Mr. Geithner's failure to pay Social Security and Medicare payroll taxes from 2001 to 2004 while an employee at the International Monetary Fund—IMF. Then, I spoke to Finance Committee ranking member CHUCK GRASSLEY who provided some additional insight. Based on those factors, I decided to vote against Mr. Geithner.

International organizations such as the IMF are exempt from the employer contribution of payroll taxes, so U.S. citizens who work there are required to pay their portion as if they are self-employed. During an IRS audit conducted in 2006, it was discovered that Mr. Geithner failed to pay these taxes and he then paid what was owed for tax years 2003 and 2004. Despite having made the same error in previous years, he did not pay for 2001 and 2002 because the statute of limitations had expired. Only after the non-payment was discovered during the vetting process by the Obama transition team in late-2008 did Mr. Geithner finally pay for tax years 2001 and 2002.

Mr. Geithner was paid an extra sum, or tax allowance, by the IMF with the expectation that he would use it to pay the IRS for his payroll tax liabilities. According to remarks by Senator GRASSLEY at Mr. Geithner's confirmation hearing, "Furthermore, the nominee received a tax allowance from the IMF to pay the difference between the 'self-employed' and 'employed' obligations of his Social Security tax." At his confirmation hearing, Mr. Geithner acknowledged receiving various documents detailing his obligations as an American employee at the IMF. The IMF provides its employees with a tax manual at the time they are hired that includes information describing how to pay self-employment taxes. Page 2 of the document states, "U.S. citizens who are staff members are required to pay U.S. tax are entitled to receive tax allowances." Page 12 of the document states, "Employees of international organizations are considered self-employed for purposes of social security taxes. As such, they must pay both the employer's and the employee's share of social security taxes. The Fund gives you a tax allowance for the employer's share of social security taxes only. You are responsible for the employee's portion of this tax." Mr. Geithner signed a document each year in order to receive this extra tax allowance. At the end of the tax allowance form are the words, "I hereby certify that all the information contained herein is true to the best of my knowledge and belief and that I will pay the taxes for which I have received tax allowance payments